

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

FREDY RENAN NAJERA MONTOYA,

Defendant.

ORDER

15 Cr. 378

PAUL G. GARDEPHE, U.S.D.J.:

In a May 3, 2021 letter, defense counsel sought an adjournment of the May 11, 2021 sentencing date, stating that he had just become aware of significant revisions in the final revised Presentence Investigation Report (“PSR”) issued on July 30, 2020. (See May 3, 2021 Def. Ltr. (Dkt. No. 159)) Counsel explained that on July 29, 2020, a final PSR was issued, and on July 30, 2020, a revised final PSR was issued that includes significant additions to the offense conduct and related cases sections. (*Id.*) Counsel stated that he was “unaware of the revised and additional paragraphs” in the July 30, 2020 PSR at the time he submitted his November 23, 2020 sentencing memorandum and objections to the PSR, and that he was never given an opportunity to object to the revisions to the July 30, 2020 PSR before it was issued. (*Id.*) Accordingly, on May 6, 2021, this Court granted the Defendant’s request and adjourned his sentencing to June 10, 2021. (Dkt. No. 160)

On June 1, 2021, Defendant filed a supplemental sentencing submission containing objections to the revised portions of the July 30, 2020 PSR. (June 1, 2021 Def. Submission (Dkt. No. 164)) Defendant requested an additional 30-day adjournment of the

sentencing scheduled for June 10, 2021, which this Court granted on June 2, 2021. (June 1, 2021 Def. Ltr. (Dkt. No. 163); June 2, 2021 Order (Dkt. No. 165))

In a July 5, 2021 letter, Defendant asks this Court to direct the Probation Department “to address the issues raised in Defendant’s factual objections to the Presentence Investigation Report” and adjourn the sentencing scheduled for July 12, 2021 “until such time as the Probation Office” submits a revised PSR that addresses his November 23, 2020 and June 1, 2021 objections. (July 5, 2021 Def. Ltr. (Dkt. No. 166) at 1 (citing Dkt. Nos. 155, 164)) He asserts that “reliance upon the government’s factual allegations adopted by the Probation Office without considering the objections would cause the Court to weigh 18 U.S.C. § 3553(a) factors based upon inaccurate and misleading information.” (Id.)

As stated in the addendum to the July 30, 2020 PSR, the additional and revised paragraphs were inadvertently omitted from the initial draft of the PSR. (See July 30, 2020 PSR (Dkt. No. 146) at 33) The revisions to the July 30, 2020 PSR are extensive. The changes include more than fifty new paragraphs of factual material, and address the Defendant’s drug trafficking activities between 2008 and 2015, as well as his alleged abuse of his political position in Honduras. (See July 30, 2020 PSR (Dkt. No. 164) ¶¶ 47-98) The Defendant did not have an opportunity to submit objections to these portions of the report before it was issued. Moreover, in his June 1, 2021 supplemental sentencing submission, the Defendant objects to a number of the factual assertions set forth in the revised portions of the July 30, 2020 PSR. (See June 1, 2021 Def. Submission (Dkt. No. 164) at 6-13)

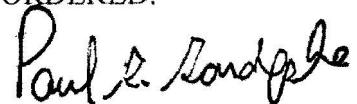
Accordingly, the Probation Department is directed to prepare a revised PSR that addresses the objections raised in the Defendant’s November 23, 2020 and June 1, 2021

sentencing submissions (Dkt. Nos. 155, 164). A revised PSR will be submitted no later than **August 13, 2021.**

The Defendant's sentencing, currently scheduled for July 12, 2021, is adjourned to **September 3, 2021 at 12:00 p.m.** in Courtroom 705 of the Thurgood Marshall Courthouse, 40 Foley Square, New York, New York.

Dated: New York, New York
July 9, 2021

SO ORDERED.



Paul G. Gardephe
United States District Judge